

In The United States Court of Federal Claims

Nos. 07-691C, 07-732C, 07-741C, 07-747C, 07-760C, 07-761C, 07-766C, and 07-771C

(Filed: November 14, 2007)

SERCO INC.;
STANLEY ASSOCIATES INC.;
CGI FEDERAL INC.;
STG, INC.; ARTEL, INC.,
ADVANCED TECHNOLOGY SYSTEMS INC.;
APPTIS INC.; and
NORTEL GOVERNMENT SOLUTIONS, INC.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant,

and

INDUS CORPORATION;
ELECTRONIC DATA SYSTEMS CORPORATION;
INTERNATIONAL BUSINESS MACHINES CORPORATION; and
GENERAL DYNAMICS ONE SOURCE, LLC,

Defendant-Intervenors.

ORDER

On November 7, 2007, plaintiff Artel, Inc., (Artel) filed a motion to supplement the administrative record seeking to add to that record various articles published between 2003 and 2007. On November 12, 2007, this court ordered Artel to file a memorandum by November 14, 2007, “discussing any authorities supporting its motion, and, in particular, citing any cases in which any court or the boards have relied upon magazine and newspaper articles in sustaining an argument that a Federal agency failed to evaluate properly the past performance of an awardee.” Earlier today, plaintiff filed a memorandum withdrawing certain of its document requests and citing several cases in support of its motion.

In the court’s view, Artel has not shown that the requested materials are properly includable in the administrative record. It has cited no case in which this court or a contract board has relied upon magazine and newspaper articles in sustaining an argument that a Federal agency failed to

evaluate properly the past performance of an awardee, nor has the court discovered any such case. Apart from the absence of authority, the court does not believe that Artel could properly rely upon the materials in question in attacking the agency's decisions, at least under the proper standard of review in this case. Indeed, were the court to allow these materials to be included in the record, it seemingly would be obliged to accept other articles offered by the awardees in support of the award, as well as documents and perhaps testimony verifying or controverting the accuracy of the factual assertions made in all these articles. That this court will not – and cannot under the law – do.

As such, the court is convinced that the materials in question do not fit within any of the *bona fide* exceptions to the general rule that the administrative record should include only materials that were before the agency. *See Murakami v. United States*, 46 Fed. Cl. 731, 734-36 (2000); *see also ARINC Eng'g Servs., LLC v. United States*, 77 Fed. Cl. 196, 200-01 (2007). Accordingly, Artel's motion to supplement the administrative record is hereby **DENIED**.

IT IS SO ORDERED.

s/ Francis M. Allegra _____

Francis M. Allegra

Judge